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From: Stephan A. Pendorf/vb

Date: January 6, 2006

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Comments/Special Instructions

Re: Response to Restriction Requirement
U.S. Patent Application No. 10/689,220
Glass as Sintering Aid and Open-Pore Moulded
Body and Method for Manufacturing Same
Art Unit: 1755
Examiner: Group, Karl E.
Our Docket No.: 3975.024

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{WP276865;1}

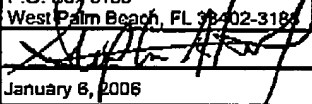
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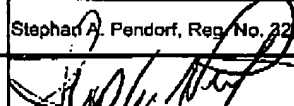
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/689,220	
	Filing Date	October 20, 2003	
	First Named Inventor	Berger et al.	
	Art Unit	1755	
	Examiner Name	Group, Karl E.	
Total Number of Pages In This Submission	3	Attorney Docket Number	3975.024

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	Stephan A. Pendorf/Akerman Senterfitt/Reg. No. 32,665 P.O. Box 3188 West Palm Beach, FL 33402-3188	
Signature		
Date	January 6, 2006	

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO.: 10/689,220

CONFIRMATION NO.: 4079

APPLICANT: Berger et al.

FILED: October 20, 2003

GROUP ART UNIT: 1755

EXAMINER: Group, Karl E.

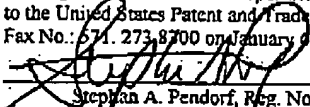
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FOR: Glass as Sintering Aid and Open-Pore Moulded Body and Method for Manufacturing Same

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RESPONSE TO RESTRICTION REQUIREMENT

Sir:

The Examiner issued a restriction requirement on December 6, 2005 in which the Examiner identified

- Group I, claims 1-5, drawn to glass, classified in class 501, subclass 72;
- Group II, claims 6-7, drawn to a method of manufacturing a body, classified in class 264, subclass 603 and

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- Group III, claims 8-9, drawn to a body, classified in class 501, subclass 1.

In response to the non-final Office Action (hereinafter "the Action"), Group III (claims 8-9) is elected for prosecution with traverse against the opinion of the Examiner that group II and group III are distinct. Applicants request withdraw the Restriction Requirement for inventions II and III for the following reasons.

The Examiner founded his opinion that the product as claimed may be made by another process, i.e. by hot pressing. This argument is not persuasive because by hot pressing it is necessary to bring an open pore body into a mould, add the slurry on the body and press the hot mould walls against the outer surface of the body. By that action the open pores of the body will be closed through the pressure or stick together. Also, closing will take place by the hot pressed slurry and its solidification between the flat/smooth walls of the mould and the body surface.

In this way a significant part of the pores are not open and the ability for resorption of the body would not be given or dramatically reduced.

Further, as set forth in the specification, paragraph [00012]:

Surprisingly, it has been found that the 2-component variant described above yields the desired sintered product, whereas an immediate combination of all components does not support the sintering process as desired. Unless the separately produced amorphous glass phase is added, no solid structure is achieved by applying the TCP slurry onto a polyurethane sponge and sintering it, but parts of the sintered product crumble away.

Thus, the present invention is made based on the recognition that keeping the glass component and the β -tricalcium phosphate components separated until a subsequent stage in manufacturing produces a superior product. Where such a product can not be easily claimed in product terms, Applicants are entitled to claim the product in product-by-process claims. Process and product-by-process are two forms for claiming such an invention. And if the product exhibits novel identifiable characteristics, then Applicants should be entitled to claim such a product as well as the unique characterizing process by which it is produced, and the product-by-process.

{WP276858:1}

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Pursuant to MPEP 803, if the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

Pursuant to MPEP 802.01, the Director may require restriction if two or more "independent and distinct" inventions are claimed in one application. ... The term "independent" as already pointed out, means not dependent. A large number of inventions between which, prior to the 1952 Act, division had been proper, are dependent inventions, such as, for example, combination and a subcombination thereof; as process and apparatus used in the practice of the process; as composition and the process in which the composition is used; as process and the product made by such process, etc.

The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect. For example, a process and an apparatus incapable of being used in practicing the process are independent inventions. ... Two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect. Examples of related inventions include combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc....

The present invention being claimed in the form of a process, the product of the process, and a product having the unique morphology directly attributed to the process by which it is produced, all relating to the the recognition that keeping the glass component and the β -tricalcium phosphate components separated until a subsequent stage in manufacturing produces a superior product. Thus, these claims relate to only a single invention.

Withdrawal of the restriction requirement with respect to Group II and Group III is respectfully requested.

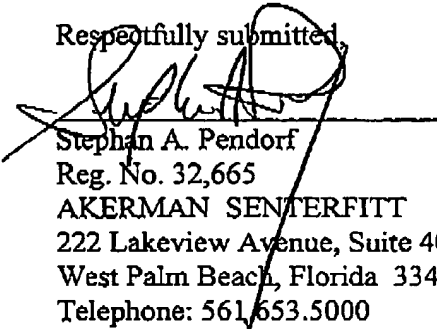
No fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 50-0951.

{WP276858;1}

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Amendment Dated January 6, 2006
Response To Restriction Requirement Dated December 6, 2005

Should the Examiner believe that anything further is necessary, the Examiner is respectfully requested to contact the undersigned representative at the telephone number listed below.

Respectfully submitted,



Stephan A. Pendorf

Reg. No. 32,665

AKERMAN SENTERFITT

222 Lakeview Avenue, Suite 400

West Palm Beach, Florida 33401-6183

Telephone: 561.653.5000

Attorney Docket No.: 3975.024

{WP276858;1}